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Twenty Years of Colorado Supreme Court Decisions without Law

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NOTES AND COMMENTS

Twenty Years of Colorado Supreme Court Decisions Without Law

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This article is an editorial on the *fact* of the trend in the Colorado supreme court to affirm district and county court rulings without written opinions, without stating reasons and without citing authority to sustain affirmance. It is written with a firm conviction that the supreme court, to a very great extent, is responsible for the freedoms of Colorado citizens. In the charts that follow, the figures representing decisions from 1936 to 1948 are based upon three articles in the Rocky Mountain Law Review.[1] The figures representing decisions from January Term 1949, through December Term 1955, are based upon a case by case analysis by this writer.[2]

There is much confusion created when a lower court ruling is affirmed without written opinion. Practitioners cannot know the effect of such a decision upon the validity or applicability of pre-existing law as stated by the judge who tried the case. Does such a judgment uphold the trial court's opinion thereby strengthening it, or is the high court merely dodging issues because of facts peculiar to the particular case? Or does the supreme court feel that the law is so clear and so manifestly applicable to the facts that they will not glorify nonsensical contentions by explaining to the plaintiff in error why the lower court ruling must be affirmed?

Rule 118(f) of the Colorado Rules of Civil Procedure provides that, "Any judgment may be affirmed without written opinion. . . ."[3] Evidently the Colorado supreme court has a tendency to interpret "may" as "shall" for it is a fact that from 1936 through 1955 more and more attorneys, percentagewise, received a single blue-backed typewritten sheet from the clerk's office stating that the issues raised by the plaintiff in error had been decided with a perfunctory "AFFIRMED WITHOUT WRITTEN OPINION." Neither the client nor the progress of the law gains from the great amount of money necessarily expended in the prosecution of a review decided in such a manner.

Of perhaps more importance than the client's money is the effect of such a decision on the attorney-client relation. One should

1 Blickhahn, The Trend—Survey of the Work of the Colorado Supreme Court in 1947 and 1948, 21 Rocky Mt. L. Rev. 202, 204 (1948); Bowen and De Souchet, The Trend—Survey of the Work of the Colorado Supreme Court, 1942-1946, 19 Rocky Mt. L. Rev. 274, 276 (1947); Holme, Jr., Williams, and Driscoll, Jr., The Trend—Survey of the Work of the Colorado Supreme Court, 14 Rocky Mt. L. Rev. 213, 214, 215 (1942).

2 These figures include decisions in cases of original proceeding such as disbarment proceedings, interrogatories of the senate, interrogatories of the governor and declaratory judgments of peculiar nature, thereby decreasing the true percentage of affirmances without written opinion.

3 Colo. Rules Civ. Proc. 118 (f).

think that counsel's advice to appeal would usually be well-founded, i.e., that at least one point of law decided unfavorably below is at least questionable to the prejudice of the prospective plaintiff in error. The figures show, however, that as of recent times approximately twenty-five per cent of all such advice must have been completely ill-founded. This surely does nothing to strengthen an attorney-client relation.

Of greatest lasting importance, however, is the impact of this trend upon democratic theory as traditionally practiced in America. Without a prolonged dissertation on the essence and mechanics of a democracy, it may be assumed that one of its tenets is that which demands a government of laws and not a government of men. This political principle means that men and their cases are to be judged by fixed standards only. Further, it means that everyone knows, or at least can know, that if he acts in a certain manner, certain results will follow. An affirmance without opinion fails to provide knowledge or notice of the law which governs. It does not make the law clear, certain or definite. Instead law students, practitioners and jurists find themselves in a state of uncertainty illustrated in a recent dispute:

> It is the contention of the Plaintiff in Error that the information did not charge rape. It is true that a similar fact situation was presented in Sanchez et al v. People, No. 17809, 293 P. 2d. 297, decided February 14, 1956 and it is true that the question was squarely presented by the briefs in that case.
>
> It was indeed unfortunate that the case was dispensed with the omnipotent words "AFFIRMED WITHOUT WRITTEN OPINION". These words neither add to nor subtract from the existing law on the subject. These words mean only that for some reason this court decided that the conviction should be affirmed without an opinion.
>
> That decision is not law on any point.
>
> We are sure that the Attorney General does not mean that that case affirmed, reversed, distinguished, accepted or rejected the existing Colorado law on the subject . . .
>
> We cannot read minds; we do not know why the conviction was affirmed without written opinion . . .
>
> Presumably we are arguing here legal points and we are entitled to a legal decision, not only to guide this case, but all similar cases in the future. The Attorney General argues that the Supreme Court has ruled adversely in the *Sanchez* case, supra, but what lawyer could find such law in the *Sanchez* case?[4] We are surprised that the Attorney General would cite such a case in view of the fact that there was no opinion to guide anyone in the law. What lawyer could find the law in the *Sanchez* case?

[4] Reply Brief of Plaintiff in Error in *Cedillo v. People*, Colo. Sup. Ct. No. 17905, pp. 5-7. Both the Cedillo and the Sanchez case involved the question whether the court has jurisdiction over the subject matter of rape if an information fails to negate a marital relation between the prosecutrix and the defendant. Both were affirmed without written opinion.

That which deals with the law should be qualitative rather than quantitative. It is perhaps ironic that this article, with the graph and table that follows, emphasizes the quantitative with the sole aim of improving the qualitative.[5]

Affirmances Without Opinion from Jan. Term 1949 through Jan. Term 1956

Term	Total Cases	Civil	Criminal	No Written Opinion In Civil	No Written Opinion In Criminal	Total Affirmances Without Written Opinions	Percentage of Decisions Affirmed Without Written Opinion	Source
1949								
Jan.	45	39	6	1	0	1	2.22	119 Colo.
Apr.	61	53	8	1	0	1	1.64	119, 120 Colo.
Sept.	48	42	6	6	0	6	12.50	120, 121 Colo.
1950								
Jan.	46	40	6	6	0	6	13.04	121 Colo.
Apr.	66	61	5	10	1	11	16.67	121, 122 Colo.
Sept.	61	51	10	3	1	4	6.56	122, 123 Colo.
1951								
Jan.	28	27	1	3	0	3	10.71	123 Colo.
Apr.	64	51	13	10	2	12	18.75	123, 124 Colo.
Sept.	58	48	10	9	0	9	15.52	124, 125 Colo.
1952								
Jan.	48	42	6	7	1	8	16.67	125 Colo.
Apr.	59	51	8	6	2	8	13.56	125, 126 Colo.
Sept.	69	61	8	17	1	18	26.09	126, 127 Colo.
1953								
Jan.	55	52	3	10	1	11	20.00	127 Colo.
Apr.	83	77	6	11	2	13	15.66	127 Colo.
Sept.	82	78	4	24	0	24	29.27	128 Colo.
1954								
Jan.	64	54	10	17	0	17	26.56	128, 129 Colo.
Apr.	87	82	5	23	0	23	26.44	129, 130 Colo.
Sept.	76	67	9	21	2	23	30.26	130 Colo.
1955								
Jan.	75	70	5	18	0	18	24.00	131 Colo.
Apr.	102	93	9	28	1	29	28.43	131, 132 Colo.
Sept.	61	54	7	7	0	7	11.48	132 Colo. and files of Colo. Sup. Ct. Reporter
1956								
Jan.	58	?	?	?	?	14	24.00	files of Colo. Sup. Ct. Reporter

See graph following page

[5] For analyses of a similar problem in the Supreme Court of the United States, that of denial of certiorari, see Harper and Rosenthal, What the Supreme Court Did Not Do in the 1949 Term—An Appraisal of Certiorari, 99 U. Pa. L. Rev. 293 (1951); Harper and Etherington, What the Supreme Court Did Not Do During the 1950 Term, 100 U. Pa. L. Rev. 354 (1952).

Percentage of Decisions Without Written Opinions
from Jan., 1936 - Jan., 1956